

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

TEXAS DEMOCRATIC PARTY, DEMOCRATIC) AU:19-CV-01063-LY
SENATORIAL CAMPAIGN COMMITTEE,)
DEMOCRATIC CONGRESSIONAL CAMPAIGN)
COMMITTEE, EMILY GILBY, TERRELL)
BLODGETT, TEXAS YOUNG DEMOCRATS,)
TEXAS COLLEGE DEMOCRATS,)

Plaintiffs,)

V.) AUSTIN, TEXAS

RUTH HUGHS,)

Defendant.) MARCH 17, 2020

RACHEL MILLER, TEXAS DEMOCRATIC) AU:19-CV-01071-LY
PARTY, DNC SERVICES CORP., DSCC, DCCC,)

Plaintiffs,)

V.) AUSTIN, TEXAS

RUTH HUGHS,)

Defendant.) MARCH 17, 2020

TRANSCRIPT OF TELEPHONE CONFERENCE
BEFORE THE HONORABLE LEE YEAKEL

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23
24 Proceedings recorded by computerized stenography, transcript
25 produced by computer.

16:02:49 1 (In chambers)

16:02:49 2 THE COURT: Okay. Only one housekeeping chore is
16:02:53 3 we're not looking at you, but we do have a court reporter. So
16:02:57 4 anytime anyone speaks, just state your name and then speak so
16:03:02 5 we'll have the complete record.

16:03:04 6 So, whoever wants to tell me first, tell me what your
16:03:07 7 problem is.

16:03:09 8 MR. HAMILTON: All right. Thank you, Your Honor.
16:03:10 9 This is Mr. Hamilton on behalf of the plaintiff in both of
16:03:13 10 these cases. I have formally appeared in the *Gilby* case, but
16:03:22 11 my law firm and Ms. Khanna, who is on the line here today has
16:03:27 12 entered an appearance on the Miller case. So I'll be
16:03:30 13 addressing both of them.

16:03:32 14 The concern, Your Honor, is no surprise. The
16:03:37 15 coronavirus has been sweeping the country and courts around the
16:03:41 16 nation, including this one, has entered orders with respect to
16:03:46 17 in-person courtroom appearances. The second wave of those
16:03:50 18 orders is now happening in different courts -- this is my third
16:03:56 19 call in three days -- with respect to depositions, because,
16:04:01 20 obviously, those require courtroom staff -- sorry -- legal
16:04:06 21 staff, court reporters, witnesses, and lawyers all to
16:04:11 22 congregate in small conference rooms for hours at a time, which
16:04:15 23 is contrary, of course, to the advice of all the health
16:04:21 24 professionals.

16:04:21 25 THE COURT: Yes. But it might be helpful in culling

16:04:24 1 the herd.

16:04:24 2 (Laughter)

16:04:24 3 MR. HAMILTON: That's true, Your Honor, it probably
16:04:26 4 would. Particularly those of us who are over 60 are
16:04:29 5 particularly vulnerable.

16:04:31 6 The reason that we're raising is we have a deposition
16:04:34 7 scheduled tomorrow. It's a 30(b)(6) deposition of the
16:04:37 8 representative of the Texas Democratic Party. The witness is
16:04:41 9 Glen Maxey. He is 68 years old, diabetic, and has underlying
16:04:45 10 health issues that makes him particularly vulnerable. We have
16:04:51 11 a deposition on Thursday in the *Miller* case of Ms. Miller, who
16:04:56 12 will have to drive from Fort Worth to Austin for the
16:04:59 13 deposition. And on Friday of Ms. Gilby. She's local, so
16:05:03 14 there's no driving involved, but all three of them will involve
16:05:07 15 in-person depositions.

16:05:09 16 So what we've proposed, this is -- this is not a
16:05:15 17 difficult problem. In other litigation and arbitration
16:05:18 18 elsewhere in the court, or elsewhere in the country, what we
16:05:21 19 have -- we've proposed is to take the depositions
16:05:24 20 telephonically and/or by video with the witness being in a room
16:05:31 21 six feet away from a court reporter on video and -- and the
16:05:36 22 lawyers participating either by video or by telephone.

16:05:42 23 The only -- you know, only concern that we've heard
16:05:46 24 from the State, who has refused to agree so far and, instead,
16:05:49 25 proposed to continue -- and I'll let them speak for themselves

16:05:52 1 in a moment. The only concern we've heard is this
16:05:57 2 technological one. And I submit, Your Honor, at this point in
16:06:00 3 2020, that's not -- that's not a problem that is material or
16:06:05 4 significant.

16:06:07 5 I have a college senior who has just had her college
16:06:12 6 senior spring break or spring semester canceled, and all of the
16:06:16 7 classes from school are going to be done by video conference
16:06:19 8 involving a heck of a lot more than three people using
16:06:24 9 platforms like Zoom that are really easy to use. Our law firm
16:06:29 10 is using it all over the country, and colleges from coast to
16:06:30 11 coast are literally using that platform. So I don't think
16:06:34 12 there's a technology problem here.

16:06:36 13 The other point I would make is -- and the Court may
16:06:41 14 already be aware of this. Of course, it's not applicable to
16:06:44 15 Your Honor and the Western District of Texas, but the Supreme
16:06:51 16 Court of Texas issued an order yesterday regarding a COVID-19
16:06:57 17 state of disaster. And paragraph 2(b) of that order
16:07:00 18 specifically directed that, in state court in Texas, that the
16:07:07 19 courts should allow or require anyone involved in any hearings,
16:07:10 20 depositions, or any other proceeding of any kind, including but
16:07:16 21 not limited to a party attorney with a court reporter, to
16:07:21 22 participate remotely, such as by teleconferencing, video
16:07:25 23 conferencing, or other means.

16:07:26 24 Your Honor, I think you obviously have the plenary
16:07:29 25 authority to direct parties to cooperate and to take or defend

16:07:33 1 these depositions remotely, and that's what we're asking for
16:07:39 2 here.

16:07:39 3 The State has suggested that we simply extend the
16:07:43 4 discovery cutoff and, you know, delay these depositions.
16:07:47 5 That's not going to solve the problem. This issue isn't going
16:07:50 6 to go away in a matter of days or weeks. It's probably at
16:07:57 7 least months. And this case can't be delayed because of the
16:08:04 8 press of the election dates. So we need to stay on track. The
16:08:07 9 depositions need to move forward. There's no reason to delay
16:08:10 10 them, and it's simply a matter of protecting the health and
16:08:13 11 safety and lives of the staff, court reporters, lawyers, and
16:08:18 12 witnesses who are going to be hauled in during the course of
16:08:24 13 discovery in the matter.

16:08:25 14 So that's what we're simply asking Your Honor, is a
16:08:28 15 minute order directing the parties cooperate to take these
16:08:29 16 depositions remotely.

16:08:32 17 THE COURT: All right. Who wants to speak for the
16:08:34 18 State in both cases?

16:08:36 19 MR. SWEETEN: Your Honor, this is Patrick Sweeten.

16:08:38 20 And so I want to address a few issues. First of all,
16:08:43 21 we are aware of COVID-19 and the concerns that exist, you know,
16:08:47 22 with respect to that. And in no way were we insisting on
16:08:50 23 in-person contact in these next three depositions in the next
16:08:53 24 few days. That's not accurate. That's a red herring.

16:08:59 25 In fact, yesterday I spoke to counsel from BC face to

16:09:02 1 face, who indicated that he was going to be in Austin and at
16:09:05 2 the deposition. We then learned last night that, you know,
16:09:09 3 he's got a health problem and that he's over 65. That's the
16:09:12 4 first time they've mentioned it. We even made arrangements
16:09:16 5 yesterday as to where to take him.

16:09:17 6 We're not trying to push forward -- if there are
16:09:22 7 concerns about his health, we're not trying to push forward and
16:09:26 8 take the depositions tomorrow. In fact, we have three
16:09:29 9 depositions that were all set as in-person depositions, and
16:09:31 10 I've told them in e-mail today that we're willing to move
16:09:34 11 those.

16:09:34 12 What we did, though, is we took I think a very
16:09:37 13 reasonable step of saying why don't we pause? I mean, the
16:09:40 14 reason we're at such a torrid pace is that we have a scheduling
16:09:48 15 deadline of fact discovery of May 1st in one case and May 15th
16:09:52 16 in the other. And why don't we just push one of those back
16:09:55 17 30 days, which would make it June 15th and one of them back 45
16:10:00 18 days and make it June 15th. We can still -- one of them has a
16:10:05 19 trial date of July 20th and 21st. We can still make that trial
16:10:09 20 date.

16:10:09 21 That would allow us to see where this is going and
16:10:14 22 maybe take these corporate rep depositions towards May or June. You
16:10:18 23 know, that's -- you know, that's three or a four months out,
16:10:21 24 and things may change. And, you know, if -- if there's a
16:10:27 25 particular health concern that is coming up, you know, later in

16:10:31 1 the fact discovery period, you know, we could address that, you
16:10:35 2 know, through technological means.

16:10:37 3 So they're trying to have us shift these three
16:10:40 4 depositions that we were going to take immediately into video
16:10:43 5 conference depositions. You know, we're not ready to turn on a
16:10:47 6 dime on an e-mail that I saw for the first time when I got in
16:10:51 7 this morning and then turn, you know, three depositions this
16:10:54 8 week into video conference depositions. And we think a better
16:10:57 9 way to handle that would just be let's move the -- the fact
16:11:00 10 discovery dates 30 days.

16:11:03 11 We can still make the trial dates. There's plenty to
16:11:10 12 do in this case. They've disclosed five experts in the ballot
16:11:13 13 order case, and that's the case that's already set for trial
16:11:16 14 that Your Honor allotted them six hours for. So we've taken
16:11:19 15 one of the expert's depositions there. We're working on our
16:11:22 16 experts. We've got discovery issues between the parties as far
16:11:25 17 as getting written discovery exchanged back and forth. There
16:11:28 18 is plenty to do, and we thought we could -- we could move the
16:11:32 19 depositions. You know, perhaps as things unfold, in-person
16:11:36 20 depositions in May, June are going to be workable.

16:11:39 21 But, in the event that they are not, you know, then
16:11:43 22 we could talk about additional methods of handling it. But no
16:11:46 23 one here from the State is saying we're going to take an
16:11:52 24 elderly person's deposition tomorrow in person and we won't
16:11:55 25 move from that. We told them that. And so that's a red

16:12:00 1 herring. We think the more reasonable step would be simply to
16:12:03 2 move the fact discovery deadline to allow us to, you know,
16:12:07 3 react to this crisis.

16:12:09 4 You'll remember, Your Honor, on both of these cases
16:12:11 5 the same law firms has been pushing and saying we've got to
16:12:17 6 have this case heard -- you know, we've got to have this case
16:12:20 7 heard this summer. Well, we already have a compressed trial
16:12:24 8 schedule as a result of them coming to this court saying it's
16:12:26 9 got to be done. We've got to get this, you know, tried this
16:12:31 10 summer.

16:12:32 11 And so there is room to -- to move out 30 to 45 days,
16:12:37 12 depending on the case. We're asking for 30 on ballot order and
16:12:41 13 we're asking for 45 on mobile voting, you know, with a uniform
16:12:45 14 deadline of June 15th. And I think that there would still be
16:12:48 15 time, certainly, to make the July trial that the Court has
16:12:50 16 already set, that's already on the Court's schedule, and work
16:12:54 17 through this problem, you know, in a reasonable way in light of
16:12:59 18 this pandemic that has, you know, impacted many of my cases as
16:13:04 19 well.

16:13:04 20 And so we're working through these issues. But I
16:13:12 21 think the primary step is let's get some room from these
16:13:14 22 already extremely compressed schedules that we were really
16:13:16 23 working to make and we were definitely on pace to make. But
16:13:18 24 this has happened, and now they're trying to assert that we
16:13:21 25 have to take all of these in a certain way. And we think

16:13:24 1 that -- that the best way to handle that would be to just
16:13:27 2 extend the fact discovery deadline.

16:13:30 3 THE COURT: All right. Let me make a couple of
16:13:35 4 observations.

16:13:36 5 We do have the 1071 case set for trial July the 20th.
16:13:48 6 I think there is a need to get both of these cases tried
16:13:51 7 sometime in that range because -- I'm not suggesting that
16:13:56 8 you-all overlooked this, but most lawyers overlook the fact
16:14:04 9 that in all cases, particularly ones that have great statewide
16:14:07 10 impact and involve significant issues, the opinions don't jump
16:14:16 11 out off of the bench as soon as I've heard the testimony. It
16:14:25 12 takes a good long time for us to write a reasoned opinion and
16:14:33 13 do the research.

16:14:35 14 I face these cases that generally have good lawyers
16:14:38 15 on both sides, and the good lawyers on both sides overlook how
16:14:43 16 difficult the cases are. They're quite obvious and they're
16:14:46 17 quite apparent to one side and quite apparent to the other
16:14:53 18 side. They're not that apparent to the Court.

16:14:55 19 We are underwater in Austin by the number of cases we
16:14:59 20 have. We are hugely under-judged. We only have two
16:15:04 21 United States district judges in Austin. The last time we got
16:15:07 22 a new position in Austin was 1991, which means right now what
16:15:13 23 we're working with are the number of judges that the docket was
16:15:18 24 projected to be in 1991.

16:15:21 25 If you buy into the proposition that the amount of

16:15:26 1 legal activity in an area is a direct factor of how many people
16:15:30 2 you put in an area, which does give a good ratio, we have twice
16:15:35 3 as many people in the Austin Division of the Western District
16:15:39 4 of Texas than we did in 1991, and our dockets have just about
16:15:45 5 doubled and we're dealing with virtually -- using virtually the
16:15:51 6 same number of law clerks and judges to resolve them.

16:15:56 7 Yes, we got a new magistrate judge last summer, but
16:15:59 8 magistrate judges, while although somewhat helpful, are of
16:16:04 9 marginal utility, particularly here where we have the lion's
16:16:12 10 share of the constitutionality of statute cases that come down
16:16:15 11 the pike in Texas.

16:16:17 12 So let me just say that a July 20th trial date in the
16:16:21 13 1071 case is not pushing it in order to get an opinion out a
16:16:31 14 reasonable period before the November elections.

16:16:36 15 Now, I understand the argument that we've been doing
16:16:39 16 it this way a long time and there's nothing magic about
16:16:42 17 November of 2020. And I am sympathetic to that. There is an
16:16:51 18 urgency but, to a large extent, it's an artificial urgency that
16:16:56 19 only pertains to this election. But what I'm telling you is,
16:17:00 20 if we get past late July to hear either one of these cases,
16:17:06 21 your chances of getting an opinion are not good just because it
16:17:14 22 takes a long time to get things out because of the sheer weight
16:17:17 23 of the docket. And our criminal docket, while although not as
16:17:21 24 big as in some divisions, is large and is growing, and we have
16:17:26 25 to give precedence to the criminal cases, which pushes the

16:17:35 1 civil cases back farther.

16:17:37 2 Right now, based on the order that you have seen,
16:17:43 3 we're not having any jury cases through the end of April and
16:17:46 4 the grand jury has been recessed through the end of April,
16:17:53 5 which means when they come back into session, we're likely to
16:17:58 6 get a big slug of criminal cases, which could not be a good
16:18:04 7 thing for you-all, even on your July 20th hearing date.

16:18:10 8 So I'm just telling you everything is a problem right
16:18:13 9 now. The coronavirus is creating that problem. I hope I'm
16:18:23 10 wrong, but I'm not convinced that we're going to be back to
16:18:25 11 business as usual on May the 1st. I think this is a situation
16:18:29 12 where we've started -- the courts have started moving dates
16:18:36 13 along but I don't think we have seen the end of it. So there
16:18:40 14 is that.

16:18:41 15 And in the 1063 case we have not yet set that one for
16:18:49 16 trial, and we've got a motion to dismiss setting in that case
16:18:58 17 that we'll take up first. If the case survives the motion to
16:19:03 18 dismiss, I honestly don't know where that case is going to go
16:19:08 19 for trial, because we are full. And, as I said, what is not
16:19:15 20 often apparent when you look on the Internet at the dates we
16:19:19 21 have court set is the fact that I spend more time on the same
16:19:25 22 matter outside of the courtroom than I spend on that matter
16:19:30 23 inside the courtroom. And so there has to be time set aside
16:19:36 24 for that. So everyone needs to understand that.

16:19:40 25 And I would think that lawyers of your skill and

16:19:45 1 experience would be capable of sitting down and understanding
16:19:53 2 how all of those moving parts work and working out a reasonable
16:19:57 3 agreement. It appears that you cannot, and I am disappointed
16:20:07 4 in both sides, because somewhere in the middle is likely to be
16:20:14 5 a time when these depositions can be taken that does not push
16:20:18 6 it too close. But let me just say I'm not convinced that any
16:20:30 7 of these orders get lifted by June the 25th.

16:20:33 8 Now, I have been working with lawyers that have
16:20:40 9 primarily legal issue bench trials, and we are setting a few
16:20:43 10 here or there. But with six hours a side on the one that's
16:20:51 11 set, that is over a day of trial time, and I'm not sure we're
16:20:57 12 going to have that in June. So those are just things that you
16:21:06 13 have to think about. In the 1071 case, of course, we have the
16:21:11 14 motion to dismiss set the 24th, which we'll discuss.

16:21:18 15 So let me just ask you-all -- because I get paid to
16:21:24 16 make decisions and I'm fine with that; it's what I do, and I
16:21:31 17 will make a decision on this. I will tell you one of you will
16:21:35 18 not like it and the other one will, and one of you will think
16:21:39 19 it is wrong and arbitrary and it could have been handled better
16:21:45 20 and the other one will agree with it.

16:21:47 21 You're the only ones that can have an agreement that
16:21:53 22 satisfies both of you, if you understand what compromise is,
16:22:01 23 and very few people apparently today do, not the least number
16:22:05 24 of which are in Washington. But you both have to give up
16:22:09 25 something to get this done.

16:22:10 1 Now, how important is it to get it done on the
16:22:17 2 schedule it's on versus getting it done in time to have the
16:22:24 3 trial in June, because if I'm going to do it --

16:22:31 4 MR. HAMILTON: Your Honor, if I can address --

16:22:31 5 THE COURT: Just a minute.

16:22:33 6 -- I'm going to do it one way or the other, and I'll
16:22:35 7 just tell you what it is. I'm either going to just arbitrarily
16:22:38 8 set a new date, which I don't think is a good idea, because I
16:22:43 9 don't think that's going to be made, or I'm going to order it
16:22:48 10 be done electronically. We're in a brave new world out there.
16:22:53 11 We're doing more things electronically. Everybody is going to
16:22:55 12 have to give up something. We're going to be in pain for a
16:22:59 13 long time in the way businesses operate and the way we do
16:23:02 14 things. So now you may address that.

16:23:08 15 MR. HAMILTON: Well, Your Honor -- Mr. Hamilton on
16:23:10 16 behalf of the plaintiffs in both cases -- I understand and
16:23:14 17 appreciate the Court's comment about the crisis that is
16:23:21 18 exacerbating in the courts with the collision of all of these
16:23:29 19 trial dates and would suggest that that warrants sticking with
16:23:35 20 the schedule.

16:23:36 21 We're happy to be flexible in terms of the specific
16:23:41 22 scheduling of these depositions. I don't see any reason why we
16:23:44 23 need to. It's not difficult to arrange the logistics of a
16:23:47 24 video deposition or a telephonic deposition. Counsel can
16:23:58 25 e-mail --

16:23:57 1 THE COURT: You're wasting everybody's time.
16:23:58 2 Everybody understands that. I don't want to hear anymore
16:24:01 3 prose. I want to know if you're going to agree to one way or
16:24:03 4 the other, or am I just going to order it, you know. You-all
16:24:08 5 aren't being -- let me just tell you, you-all are not being
16:24:11 6 reasonable, because you haven't worked this out. So I don't
16:24:14 7 want to hear why one side is more reasonable than the other
16:24:17 8 side.

16:24:18 9 MR. SWEETEN: Your Honor, this is Patrick Sweeten
16:24:20 10 from the State. And I'll just tell the Court that we are happy
16:24:23 11 to have a discussion with opposing counsel about all these
16:24:27 12 issues based on what your -- what the Court has laid out and
16:24:31 13 see if we can come to something workable.

16:24:33 14 We tried that, you know, in a short e-mail span when
16:24:38 15 this was first raised last night and until they sent the Court a
16:24:43 16 letter at two o'clock.

16:24:44 17 THE COURT: Stop, Mr. Sweeten, I want to ask you a
16:24:46 18 question right there.

16:24:48 19 MR. SWEETEN: Yes, sir.

16:24:48 20 THE COURT: Have you-all had either a face-to-face
16:24:50 21 meeting or a telephone conference about these issues since the
16:24:55 22 first e-mail went out?

16:24:58 23 MR. SWEETEN: Since the e-mail last night, the
16:25:00 24 parties have only exchanged e-mails until 2 p.m.

16:25:03 25 THE COURT: All right. Then let me tell you again

16:25:05 1 what I have told lawyers a thousand times: It is a problem of
16:25:09 2 the modern practice of law that lawyers try to work things out
16:25:13 3 with e-mails. And when you try work them out with e-mails, it
16:25:18 4 never works, or only in the rarest of cases, things get
16:25:24 5 misinterpreted in e-mails. It's the worst thing that ever
16:25:27 6 happened to the practice of law.

16:25:29 7 My experience in my court has been that at some point
16:25:35 8 both sides, or at least one side, gets frustrated with the
16:25:39 9 e-mails, which is what appears happened here, and then you get
16:25:43 10 the Court involved. Whereas if you had had personal
16:25:45 11 communication, at least a telephone call, you might have come
16:25:52 12 closer to getting this solved.

16:25:54 13 And I am very critical of the whole process and the
16:25:59 14 practice of law today which leads everybody to think that they
16:26:03 15 can convince somebody by e-mail what ought to be done, because
16:26:08 16 it's just not so. There has never been an instance in my
16:26:14 17 court, which I'm aware of that has come to my attention, that
16:26:17 18 when things started out with e-mails and I get the lawyers on
16:26:21 19 the phone or get them in here in front of me and find out they
16:26:24 20 haven't ever talked about it, that anything the Court has done
16:26:28 21 has been anything but a waste of time.

16:26:31 22 So now go ahead with what you're saying, because I'm
16:26:36 23 disappointed that when you got the notice that we could have a
16:26:41 24 phone call, you-all didn't immediately have your own telephone
16:26:45 25 conversation. The only role you as lawyers have in this case

16:26:47 1 is to resolve the case. It's not up to the Court to resolve
16:26:52 2 the case. And you are supposed to make it as expeditious as
16:26:59 3 you can to get the case resolved.

16:27:01 4 And what you do when you get engaged in banter like
16:27:04 5 this is waste the Court's time, because I would put you to
16:27:09 6 trial without any depositions. I do not believe expert
16:27:16 7 testimony is important in this case. I believe it's a question
16:27:18 8 of looking at statute and determining the issues that are
16:27:21 9 presented. I realize both of you disagree. But I'm not likely
16:27:25 10 to give any experts very much weight. I'll just tell you that
16:27:30 11 going in. And I'm not likely to give any fact issue witnesses
16:27:34 12 very much weight.

16:27:35 13 What I'm going to give the weight to is looking at
16:27:39 14 the statute and determining whether the objections to it
16:27:41 15 legally are well-taken. So that's what I tell you.

16:27:53 16 MR. SWEETEN: Well, Your Honor, the State hears you
16:27:55 17 loud and clear, we are certainly willing to discuss this
16:27:58 18 matter, you know, with opposing counsel. We certainly -- you
16:28:02 19 know, we were surprised that the Court was contacted, you know,
16:28:07 20 as quickly as it was. But I think that there's probably, you,
16:28:11 21 know some room to have additional discussions and try to work
16:28:16 22 on this issue.

16:28:17 23 I mean, that, you know, may involve -- it's got to
16:28:21 24 involve some sort of give and take. So I hear the Court and
16:28:24 25 I'll pledge to do that and talk with opposing counsel on that

16:28:29 1 issue.

16:28:30 2 MR. HAMILTON: And, Your Honor, on behalf of the
16:28:31 3 plaintiffs, of course we understand and absolutely will take
16:28:36 4 Mr. Sweeten up on that and have a conference call with him
16:28:39 5 shortly after this one and do our best to reach an amicable
16:28:44 6 agreement that accommodates both sides as well as the health
16:28:47 7 concerns that are raised.

16:28:49 8 THE COURT: All right.

16:28:50 9 MR. HAMILTON: Thank you for your time.

16:28:52 10 THE COURT: All right. Then I'm going to cut this
16:28:53 11 off and let you do that. But let me say something while I've
16:28:57 12 got you on the phone, because we've got the motion to dismiss
16:29:01 13 set on the 24th in *Miller* and a scheduling conference on the
16:29:07 14 25th in *Gilby*. It is going to be my intention to conduct both
16:29:12 15 of those by telephone because we are -- we haven't totally shut
16:29:18 16 the building down, but we are restricting a lot of things
16:29:25 17 because we don't want to throw too many people in contact with
16:29:30 18 one another if we can avoid it. Some of the things we can't
16:29:33 19 avoid.

16:29:34 20 But in part of your discussions you might want to
16:29:37 21 talk about how you want to handle the fact that those two
16:29:42 22 hearings will be done by telephone. And if you have exhibits
16:29:50 23 or things in the -- on the motion to dismiss in the *Miller*
16:29:55 24 case -- we probably won't have anything on just the scheduling
16:29:58 25 conference in the *Gilby* case -- you might want to consider

16:30:03 1 getting them to the Court early and what have you. So discuss
16:30:06 2 the logistics of those two hearings also.

16:30:12 3 MR. HAMILTON: Yes, sir.

16:30:13 4 THE COURT: All right. Thank you-all.

16:30:13 5 MR. SWEETEN: Thank you, Your Honor.

16:30:13 6 (End of transcript)

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1 **UNITED STATES DISTRICT COURT)**

2 **WESTERN DISTRICT OF TEXAS)**

3 I, Arlinda Rodriguez, Official Court Reporter, United
4 States District Court, Western District of Texas, do certify
5 that the foregoing is a correct transcript from the record of
6 proceedings in the above-entitled matter.

7 I certify that the transcript fees and format comply with
8 those prescribed by the Court and Judicial Conference of the
9 United States.

10 WITNESS MY OFFICIAL HAND this the 29th day of
11 September 2020.

12

13 /S/ Arlinda Rodriguez
14 Arlinda Rodriguez, Texas CSR 7753
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ARLINDA L. RODRIGUEZ, OFFICIAL COURT REPORTER
U.S. DISTRICT COURT, WESTERN DISTRICT OF TEXAS (AUSTIN)